

REMARKS

Claims 1 – 31 are pending. Claims 1, 4, 5, 7, 11, 14, 15, 17, 19, 20, 21, 23, 25, 26, 27 and 29 are currently amended. Claim 31 is new.

Claim Objections

The Office Action objected to claims 7, 17, 23 and 29 because “then” in line 3 of each claim should be “than.” Applicant has amended these claims to correct this informality.

Drawing Objections

Fig. 2 was objected to because element 32 should be labeled “NIC,” not “N/C.” Fig. 5 was objected to because step 170 should read “Receive data packets from device.” Fig. 5 also was objected to because step 180 should read “Transfer Data Packets to Program.” Applicant has corrected each of these clerical errors. Two replacement sheets showing these corrections are attached.

Specification Objections

The Office Action objected to the disclosure because after “control to” on page 11, line 2, either “the application program” or “the device driver” should have been added. The Office Action objected to the disclosure because “the application program” on page 11, line 12 should have read “the device driver.”

Applicant has made the appropriate corrections.

§112 Rejections

Claims 5, 7, 15, 17, 21, 23, 27 and 29 were rejected under 35 U.S.C. §112, first paragraph.

Applicant has added Fig. 6, which is a flow chart featuring the elements previously recited in claims 1 – 10. Additionally, Applicant has added two new paragraphs to the Detailed Description corresponding to Fig. 6. No new matter has been added as each of these

amendments is supported by original claims 1- 10. Applicant respectfully points out that §608.01(l) of the MPEP states, “[w]here subject matter not shown in the drawing or described in the description is claimed in the application as filed, and such original claim itself constitutes a clear disclosure of this subject matter, then the claim should be treated on its merits, and the requirement made to amend the drawing and description to show this subject matter.”

Applicants submit that claims 1 – 10, as filed, constituted a clear enabling disclosure of the subject matter claimed. As such, Applicants submit that the amendments to the drawings and description detailed herein is appropriate.

§103 Prior Art Rejections

The claims were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,650,640 (Muller et al.) in view of U.S. Patent No. 6,275,588 (Videcrantz et al.).

Claim 1 has been amended to recite “initiating transmission of at least one burst of data packets . . . wherein a minimum number of data packets in the at least one burst depends on a transmit size parameter.” No new matter has been added. For example, as described at page 7, line 26 – page 8, line 5 of the pending specification, “[t]he number of data packets transmitted in each transmission burst will vary depending on the transmit size parameter. For example, if the transmit size parameter is set to two-hundred data packets and if one-thousand data packets are ready to be processed, then a total of five data transmission bursts of two-hundred packets each are processed.” Applicant submits that claim 1, as amended, is allowable over the cited prior art references.

The Muller et al. patent discloses a network interface receive circuit 100 for processing communication packets exchanged between a computer network 102 and a host computer system. The network interface receive circuit 100 includes a packet batching module 122 that determines, when a packet is about to be sent, whether any other related packets will soon be transferred as well. If other related packets are found, the packet batching module 122 alerts the host computer so that the host computer may process all of the related packets as a group. In an alternative embodiment, the dynamic packet module 122 alerts the host computer when no

related packets are found or when, for some other reason, the host computer's processor should not delay processing a transferred packet.

The Videcrantz et al. patent discloses a communication system that includes a communication controller 26 connected to a LAN 28 and to a local system bus 24. The communication controller 26 includes a data read TX control 102. Data enters the communication controller 26 from the local system bus 24 through the data read TX control 102 via connection 100. The communication controller 26 includes a TX FIFO 130 that acts as a "first in first out" data storage buffer. The communication controller also includes a LAN Controller TX 134 that collects outgoing data from the TX FIFO 130 and places the outgoing data on the LAN 28. If the data read rate of the data read TX control 102 is larger than the LAN transmission rate, then transmission data will be temporarily stored in the TX FIFO 130 while the LAN Controller TX 134 transmits initial parts of the transmission data. If, on the other hand, the data read rate of the data read TX control 102 is slower than the LAN transmission rate, then the LAN controller TX 134 may temporarily store transmission data in the TX FIFO before transmitting any data. The LAN controller TX 134 may initiate the transmission as soon as the TX FIFO contains sufficient transmission data to allow for a continuous flow of data in the LAN transmission.

Neither the Muller et al. patent nor the Videcrantz et al. patent discloses or suggests initiating transmission of at least one burst of data packets wherein a minimum number of data packets in the at least one burst depends on a transmit size parameter, as recited by claim 1. Indeed, neither reference appears to even mention a transmit size parameter.

One of skill in the art would recognize that implementing features recited in claim 1 may result in one or more advantages. For example, a more efficient use of transmission bandwidth may be realized. Additionally, overall system speed and efficiency may be improved.

Claim 1 should be allowable for at least the foregoing reasons.

Claims 2 – 10 depend from claim 1 and, therefore, should be allowable for at least the same reasons as claim 1.

Independent claims 11, 19 and 25 have been amended in a manner similar to claim 1. Accordingly, claims 11, 19 and 25 should be allowable for at least the same reasons as discussed above with reference to claim 1.

Each of claims 12 – 18, 20 – 24 and 26 – 30 depends from an allowable claim and, therefore, should be allowable as well.

New claim 31 recites “wherein the minimum number of data packets in the at least one burst is equal to a maximum number of packets that the transmit size parameter is set to accommodate.” Support for that feature can be found, for example, on page 7, line 26 – page 8, line 5.

Claim 31 depends from claim 1 and, therefore, should be allowable for at least the same reasons as claim 1. Additionally, Applicant submits that neither of the cited references discloses or suggests the features recited by claim 31.

No Motivation to Combine

In Addition to the foregoing comments, Applicant submits that the Office Action failed to show the required clear and particular motivation to combine the asserted references. A claimed invention is unpatentable due to obviousness if the differences between it and the prior art “are such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art.” 35 U.S.C. § 103(a). As discussed by the Court of Appeals for the Federal Circuit, a proper conclusion of obviousness under 35 U.S.C. § 103 requires that there be some motivation in the prior art that suggests the claimed invention as a whole:

[A]n Examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability

of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” [Citations omitted] To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show motivation to combine the references that create the case of obviousness.

In re Rouffet, 149 F.3d 1350, 1357; 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1998). As further explained by the Federal Circuit:

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. See *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” *Id.*

“When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references.” *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998) (citing *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987)).

Ecolochem, Inc. v. Southern California Edison Co., 56 USPQ2d 1065, 1072-73 (Fed. Cir. 2000). The showing of the motivation to combine must be “clear and particular.” See, e.g., *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 63 USPQ2d 1374 at 1387 (Fed. Cir. 2002).

Here, the Office Action merely concludes that “[i]t would have been obvious . . . to have incorporated the use of actual arrival rate in the control of data transmission as taught by Videcrantz, into the system of Muller, for purposes of reducing data transmission time and processor load.” Applicant respectfully submits that this statement does not satisfy the standard of a clear and particular motivation to combine the cited references.

For at least these additional reasons, claims 1 – 31 should be allowable over the cited references.

Applicant : Vinay K. Awasthi
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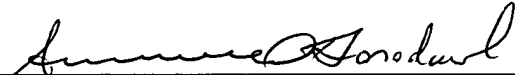
Attorney's Docket No.: 10559-373001 / P10179

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Enclosed is a \$50 check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 1/7/2005



Samuel Borodach
Reg. No. 38,388

Fish & Richardson P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

30211491.doc

Applicant : Vinay K. Awasthi
Serial No. : 09/753,083
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Amendments to the Drawings:

Two of the attached replacement sheets of drawings include changes to Figure 2 and Figure 5.

The two replacement sheets replace the original sheet that included Fig. 1, 2 and 3 and the original sheet that included Fig. 4 and 5, respectively.

In Figure 2, "N/C" in the box labeled 32 has been changed to "NIC."

In Figure 5, "program" in step 170 has been changed to "device," and "device" in step 180 has been changed to "program."

A new sheet is also attached. The new sheet includes new Fig. 6.

Attachments following the last page of this Amendment include:

Replacement Sheet (2 pages)
Annotated Sheet Showing Change(s) (2 pages)
New Sheet (1 pages)

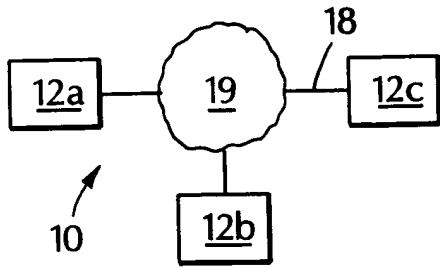


FIG. 1

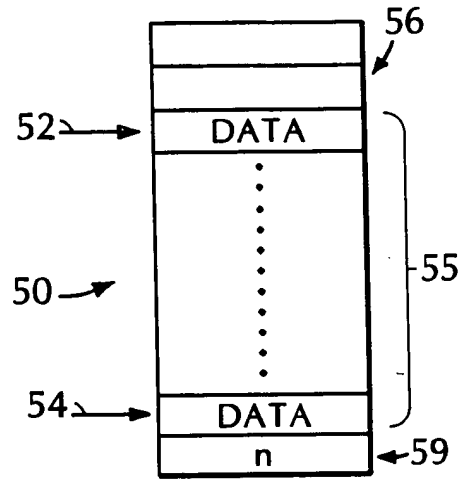


FIG. 3

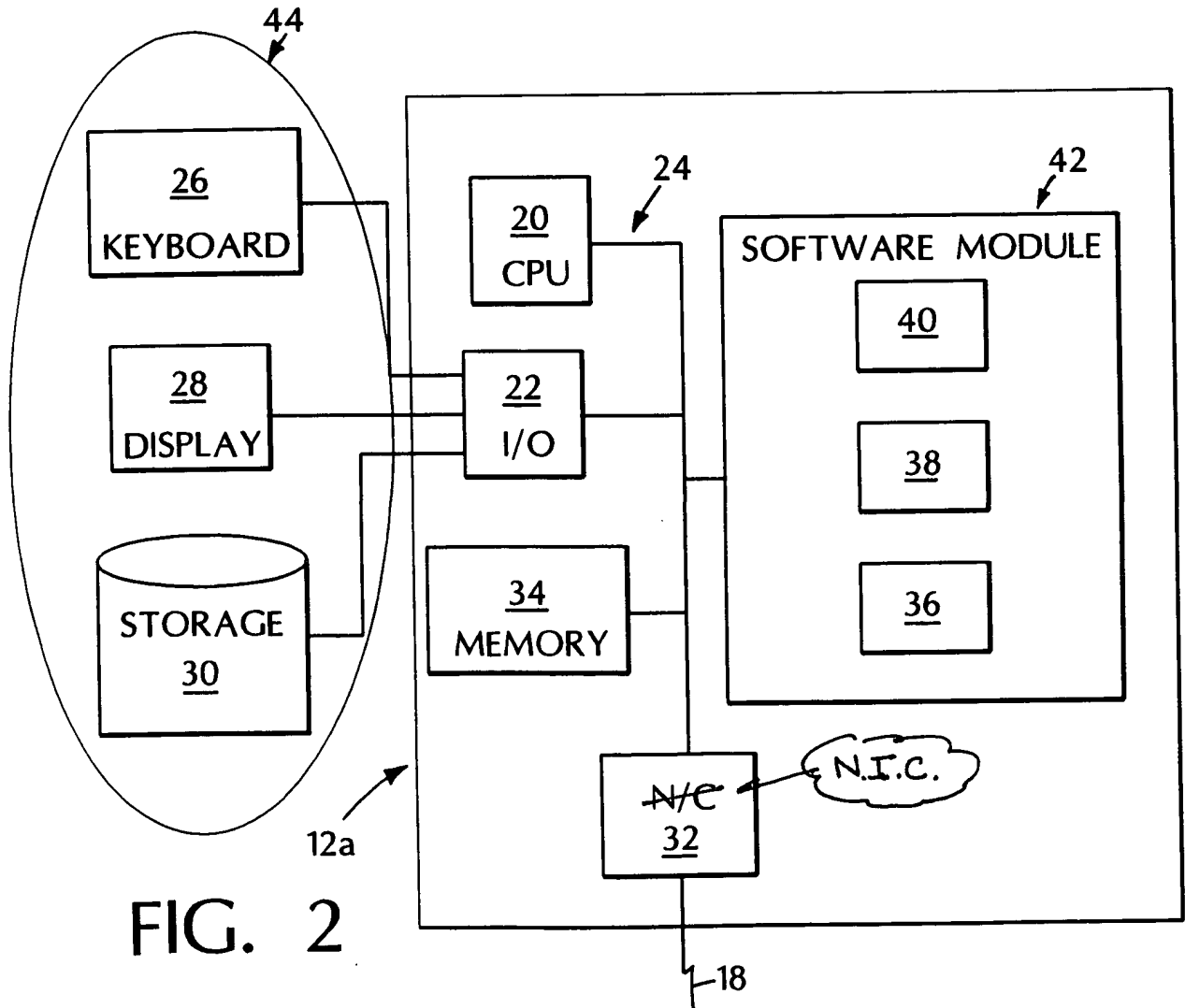


FIG. 2

